

## **Background to Interim and Final Management Orders**

The Housing Act 2004 (HA) introduced new powers for Local Authorities (LAs) to deal with some of the worst housing conditions and standards of management including the Housing Health and Safety Rating System and the licensing of certain houses in multiple occupation (HMOs). On receipt of an application to licence a property, the Council have to make a judgement on certain criteria on whether to grant or refuse a licence. Where landlords of licensable HMOs fail in their duties and responsibilities, the HA allows for the LA to take over the management of the property, initially for up to a year by making an interim management order (IMO) and then for up to 5 years by making a final management order (FMO).

## **Grounds for making an IMO or FMO**

There are several grounds for the council to make an IMO and different criteria to be met before they are made. The legislative framework is set out in the Housing Act 2004 Sections 101 to 112 and Schedule 6.

Under the HA there are two circumstances where there is a duty to make an IMO (under section 102 (2) and 102 (3)).

In summary:

102(2) where a licensable HMO is not licensed and there is no reasonable prospect of it being licensed in the near future or the health and safety condition is satisfied under HA s104.

102 (3) where a HMO licence is being revoked, but the revocation is not yet in force and on the revocation coming into force there will be no reasonable prospect of the HMO being licensed in the near future or the health and safety condition is satisfied under HA s104.

## **Requirements when an IMO or FMO is made**

Sections 106 of the HA details certain duties the local authority has once an IMO is made. It must

- Take immediate steps to ensure the health, safety and welfare of the occupants of the property or anyone occupying or having an estate or interest in any premises in their vicinity. This may include changing the locks on doors and ensuring more urgent (category 1) hazards are removed.
- Take such steps as it considers appropriate with a view to the proper management of the house. Specifically mentioned is that reasonable provision is made for insuring the building against destruction or damage by fire or other causes. However, it is expected that general maintenance, gas safety checks, electrical safety certificates and other legal requirements would be undertaken by the local authority also.

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January 2014

Sections 107 and 116 of the HA detail some general effects of IMO and FMOs. These include **powers and rights** to ensure that the duties of the local authority can be complied with including the right to:

- Possession of the property (subject to the rights of existing occupiers)
- Create new tenancies where a IMO in place (subject to written consent of the landlord). Where a FMO is in place tenancies can be created without the consent of the landlord.
- Do (and authorise a manager/other person to do) anything to the house which the landlord/interested party would be entitled to do.

The IMO or FMO would not result in NCC acquiring an interest in the property and the LA would therefore not be able to sell or lease the property. The making of a MO has no impact on those with an interest in the property such as a mortgage company or freeholder and the MO does not prevent them from exercising any of their rights in relation to the property (e.g. selling it).

### **Impact on the occupiers**

A MO would not affect the status of an occupier e.g. if they have a 6 month tenancy agreement with the landlord, it would continue even after the MO comes into force. However, a MO does have a practical impact. For example, the occupiers would pay their rent to the LA and all repairs and management issues would be the responsibility of the LA. Any new tenancies created by the LA will not be LA tenancies, but private sector tenancies.

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January 2014

# Request to Manage a Property following the making of an Interim / Final\* Management Order

(\*delete as appropriate)

Address of Property:.....

Confirmation of request for Nottingham City Homes Limited to undertake  
management of the afore-mentioned property.

Further to the Agreement (dated ..... ) between Nottingham City  
Council (NCC) and Nottingham City Homes Limited (NCH) for NCH to undertake the  
management of properties on behalf of NCC where an Interim Management Order /  
Final Management Order is made. NCC has made such an order on the above  
property and now requires NCH to undertake the management at the afore-  
mentioned property in accordance with the said Agreement.

There is attached to this request, the Information Pack (as defined in the said  
Agreement) relating to the property

Lead Case Officer .....  
(for Nottingham City Council)

Telephone:.....

Email:.....

Signed:.....  
(on behalf of Nottingham City Council)

Signed:.....  
(on behalf of Nottingham City Homes)

David Hobbs  
Operations Manager, HMO Team  
January 2014

**THIS AGREEMENT is made the                      day of                      2014**

**B E T W E E N:**

- (1) NOTTINGHAM CITY COUNCIL whose address is Loxley house, Station Street, Nottingham NG9 6JA (the "Council"); and
- (2) NOTTINGHAM CITY HOMES LIMITED (Company Number 05292636) whose registered office is 14 Hounds Gate, Nottingham NG1 7BA ("NCH")

**WHEREAS:**

- (A) The Council is a local housing authority for the purpose of licensing of HMOs under Part 2 HA2004.
- (B) Under Part 4 of the HA2004 the Council is under a duty to make an Order where certain conditions have been met in respect of a HMO and upon the making of an Order to Council assumes management responsibilities in respect of the House and its Occupiers.
- (C) NCH is an Arms Length Management Organisation wholly owned by the Council and responsible for the management of the Council's housing stock.
- (D) Pursuant to s.107 and s.116 HA2004 the Council may authorise a manager to undertake its duties during the Management Period.
- (E) By this Agreement the Council have authorised NCH to undertake its housing management duties in respect of any Orders and NCH shall carry out such duties in accordance with the terms of this Agreement.

**IT IS NOW AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement unless the context requires the following shall have the meanings set out below:

- "Authorised Officer"** means an authorised representative of the Council that has day to day management of this Agreement.
- "Commencement Date"** Date of this Agreement

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<b>“Confidential Information”</b>	means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Service, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA) and commercial sensitive information.
<b>“Contract Manager”</b>	means an authorised representative of NCH that has day to day management of this Agreement.
<b>“Contract Period”</b>	from the Commencement Date until ....
<b>“DPA”</b>	means the Data Protection Act 1998.
<b>“EIR”</b>	means the Environmental Information Regulations 2004.
<b>“Fee”</b>	means 15% of all Relevant Expenditure to be paid by the Council to NCH in consideration of the provision of the Services and as detailed in clause 3.2.
<b>“FMO”</b>	means a Final Management Order being an order expiring no more than 5 years after it is made and which is for the purpose of securing the proper management of the House on a long term basis in accordance with a Management Scheme.
<b>“FOIA”</b>	means the Freedom of Information Act 2000
<b>“Good Industry Practice”</b>	means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Service under the same or similar circumstances as those applicable to this Agreement.

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<b>“HA2004”</b>	means the Housing Act 2004 and more particularly in respect of this Agreement, Parts 4, 7 and Schedule 6.
<b>“Health and Safety Condition”</b>	has the meaning given at s.104 HA2004
<b>“HMO”</b>	is a House in Multiple Occupation and has the meaning given under s.254 HA2004
<b>“House”</b>	means a HMO subject to an Order.
<b>“IMO”</b>	means an Interim Management Order being an order expiring no more than 12 months after it is made and for the purpose of securing: <ul style="list-style-type: none"> <li>(a) any immediate steps which the Council consider necessary to protect the health, safety or welfare of persons occupying the House or persons occupying or having an estate or interest in any premises in the vicinity; and</li> <li>(b) any other steps which the Council think appropriate with a view to the proper management of the House pending the grant of a licence under Part 2 or 3 HA2004 in respect of the House or the making of an FMO in respect of it.</li> </ul>
<b>“Information”</b>	has the meaning given under s.84 Freedom of Information Act 2000
<b>“Information Pack”</b>	means the bundle of information relating to the House and which shall be provided to NCH in accordance with Schedule 1.
<b>“Intellectual Property Rights”</b>	means all copyright, patents or patent rights, registered and unregistered design rights, trade marks and all other intellectual or industrial property rights wherever in the world enforceable.
<b>“Law”</b>	means:

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- (i) any applicable statute or delegated or subordinate legislation or regulation;
- (ii) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (iv) Guidance;
- (v) National Standards; and
- (vi) Any applicable Code

In each case in force in England and Wales

**“Landlord”**

means in relation to an Order that he is the owner or lessee of the House, or part, and but for the Order would be entitled to receive the rents or other payments from the Occupiers.

**“Management Period”**

means the period during which the Order is effective and NCH have responsibility for the management of the House.

**“Management Scheme”**

means a scheme setting out how the Council are to carry out their management duties to ensure the proper management of the House under the FMO.

**“Occupier”**

means those persons occupying the House and liable for the payment of rent or other such payment.

**“Order”**

means either an IMO or FMO.

**“Partnering Agreement”**

means the partnering agreement dated 3 March 2011 between the Council and NCH regarding the management of the Council’s housing stock

**“Personal Data”**

shall have the same meaning as set out in the Data Protection Act 1998

**“Programme of Works”**

means a list compiled by the Council following a detailed inspection of the House in accordance with the Housing Health and Safety Rating System and prior to the

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making of an Order and detailing Works which in the Council's reasonable opinion are required to be carried out

**“Relevant Expenditure”**

means expenditure reasonably incurred in connection with the proper management of the house including any administration costs or premiums made for insurance of the House and in the case of an IMO includes any expenditure in relation to any immediate steps taken for the purpose of protecting the health, safety or welfare of Occupiers or persons occupying or having an estate or interest in any premises in the vicinity of the House.

**“Rents”**

means the rent or any other payment due from an Occupier under their tenancy or licence agreement.

**“Requests for Information”**

means a request for information or an apparent request under FOIA or the Environmental Information Regulations.

**“Review”**

means a review of the Services as carried out in accordance with clause 6.

**“Schedules”**

means any Schedule attached to and forming part of this Agreement.

**“Services”**

means the management of any House subject to an Order together with any repair and maintenance work that is required at the House.

**“Staff”**

means all persons employed by NCH (including volunteers, agency, locum, casual or seconded personnel) in the provision of the Services or any activity related to or connected with the provision of the Services.

**“Third Party”**

means any person who has an estate or interest in the House but not including the Landlord or any Occupier.

**“Working Days”**

any day other than a Saturday, Sunday or public holiday in England and Wales

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**“Works”**

means such repair and building works as considered necessary by the Council following an initial inspection of the House at the commencement of an Order or as required during the Management Period for the proper management of the House.

- 1.2 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated associations, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings
- 1.3 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.
- 1.4 Words importing the singular should if the contract requires have the plural meaning and vice versa.
- 1.5 Words importing the masculine include the feminine and neuter.
- 1.6 headings are for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.7 The words ‘include’, ‘includes’, ‘including’ are to be construed as if they were immediately followed by the words ‘but not limited to’.
- 1.8 In the event of any conflict between the clauses of this Agreement and its Schedules, the clauses should prevail.

**2. TERM**

- 2.1 This Agreement shall commence on the Commencement Date and continue until 2 March 2021 subject to any earlier termination provisions in accordance with this Agreement.
- 2.2 The duration of any individual Order shall be in accordance with the terms of the Order but shall not exceed 12 months for any IMO or 5 years for any FMO (the “Order Period”).
- 2.3 Where an Order is in place at the time that this Agreement terminates for whatever reason, the Council and NCH may jointly agree that NCH continue to provide the Services in respect of that Order, however no further Services will be carried out in respect of any new Orders.

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### **3. FEE**

- 3.1 The Council shall reimburse to NCH all Relevant Expenditure incurred by NCH, subject to the Relevant Expenditure having been agreed in advance with the Council or being emergency works not capable of prior agreement and necessary for the purpose of the proper management of the house.
- 3.2 In consideration for NCH delivering the Services, and in addition to reimbursing Relevant Expenditure to NCH pursuant to clause 3.1, the Council shall pay the Fee to NCH ..
- 3.3 Payment of the Fee and any other Relevant Expenditure shall be paid quarterly in arrears and taken from Rents received in line with the financial responsibilities to be undertaken by NCH in accordance with Schedule 2.
- 3.4 Where Relevant Expenditure is incurred through Works being carried out by an external contractor the Parties may agree that reimbursement of that Relevant Expenditure is made prior to the quarterly payment and this shall be reflected as a credit on any subsequent invoice.
- 3.5 NCH shall not be entitled to deduct the Fee or any other Relevant Expenditure without first submitting to the Council an invoice in accordance with Schedule 2.
- 3.6 Payments and/ or authorisations to deduct Relevant Expenditure from Rents collected shall be made to NCH within 30 days from receipt of the invoice.
- 3.7 In the event that the Rents collected do not cover the Fee or all other Relevant Expenditure this shortfall shall be detailed in the invoice and this amount shall be payable by the Council to NCH.
- 3.8 The Council shall be entitled to withhold any payment and not to approve any invoice in whole or in part where in its reasonable opinion it considers that NCH has failed to provide the Services adequately. The Council shall only be entitled to withhold payment on disputed issues. In such circumstances the Council shall provide written reasons for its opinion.
- 3.9 Neither party shall have the right of set-off.

### **4. PERFORMANCE**

- 4.1 NCH shall at all times deliver the Service in accordance with the Law.
- 4.2 NCH shall at all times deliver the Service in accordance with the obligations under this Agreement together with the Schedules.
- 4.3 NCH shall at all times ensure that the Service is performed in accordance with Good Industry Practice and shall conform to any and all codes of practice,

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performance ratings and quality standards as appropriate with the Service delivery.

- 4.4 NCH shall at all times in the performance of the Services have regard to the Council's policy for safeguarding and promoting the welfare of children and adults in vulnerable circumstances.
- 4.5 The Authorised Officer may inspect the premises at any time during the Contract Period and shall provide notice of such an inspection where it is reasonable to give such notice.
- 4.6 If at any time NCH becomes aware of any act or omission, or any proposed act or omission by the Council which prevents or hinders, or may prevent or hinder, NCH from delivering the Service in accordance with this Agreement, NCH shall inform the Council immediately.
- 4.7 Where NCH engages any sub-contractors in the delivery of the Service NCH shall at all times remain liable to the Council in respect of the delivery of the Services.
- 4.8 If NCH at any time becomes aware of any material matter which may affect the performance of the Service in accordance with this Agreement, NCH shall inform the Council immediately.
- 4.9 At all times after the Commencement Date, the Authorised Officer may organise regular and thorough inspections of NCH's performance to ensure that it is complying with its obligations under this Agreement.
- 4.10 NCH shall at all times have regard to its statutory duties under the Equality Act 2010, together with all other discrimination legislation.
- 4.11 NCH shall not discriminate between or against any Occupier, Landlord or a Third Party on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation.
- 4.12 NCH shall provide appropriate assistance and make reasonable adjustments for Occupiers, Landlords or a Third Party who do not speak, read or write English or who have communication difficulties for any reason whatsoever.
- 4.13 In the performance of the Services NCH shall ensure that 24hour assistance be available to Occupiers.
- 4.14 NCH shall act at all time so as not to place the Council in breach of its duties under Part 4 HA2004 in respect of any Order.

## **5. AUTHORISATIONS**

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- 5.1 In order for NCH to deliver the Services the Council may grant such authorisations in accordance with s.243 HA2004 as it considers appropriate to relevant Staff. Authorisations are required before NCH may exercise any power:
- 5.1.1 of entry to carry out Works (s.131 HA2004);
  - 5.1.2 power to require documents to be produced (s.235 HA2004);
  - 5.1.3 power of entry (s.239 HA2004)
- 5.2 The Council shall not unreasonably refuse to grant such authorisations.
- 5.3 An authorisation granted to NCH Staff does not prevent the Council from exercising these powers itself in respect of the Order and which may include for the purpose of monitoring the provision of the Services.
- 5.4 Where the Council does not grant an authorisation it shall ensure that wherever appropriate, relevant Staff accompany the Council when exercising its powers under 5.1.1 and 5.1.3.

## **6. REVIEW**

- 6.1 The Council and NCH shall jointly review and monitor the performance of this Agreement at intervals to be determined by the parties but which shall be as a minimum every 12 months (a "Review Meeting"). This meeting is intended to be a general review of the Services being delivered and not to be a review of all the Orders that are in place and being managed by NCH though individual Orders may be highlighted and discussed as necessary.
- 6.2 In addition to a Review Meeting under clause 6.1 the parties may meet upon the request of either party to discuss any individual Order.
- 6.3 Each Review shall be completed by the Council and NCH signing a written review record ("Review Record") containing without limitation a summary of all the matters raised during the Review, actions taken, and agreements reached.
- 6.4 If any dispute which has arisen during the Review is not shown in the Review Record or is not referred to dispute resolution under the provisions of this Agreement within 10 Working Days after signature of the Review Record it shall be deemed to have been withdrawn.
- 6.5 A referral to dispute resolution in or following a Review shall not in itself give grounds for any suspension or termination of this Agreement, and in accordance with this Agreement NCH shall deliver and shall be entitled to be paid for the Services delivered until such time as the dispute is resolved.

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## **7. COMPLAINTS PROCEDURE**

- 7.1 NCH shall operate a complaints procedure and keep a register containing details of any complaint made in respect of or by an Occupier, Landlord or Third Party, together with any response and remedial action (if required) taken by NCH.
- 7.2 NCH shall provide copies of the complaints register at each Review Meeting.
- 7.3 NCH, shall as part of its reporting obligations provide details of any complaints it has received during the reporting period.

## **8. CONTRACT MANAGER**

- 8.1 NCH shall appoint a competent and authorised Contract Manager to act on behalf of the Provider for all purposes connected with the Agreement.
- 8.2 NCH shall give written notice forthwith to the Council of any change regarding the Contract Manager.

## **9. NCH STAFF**

- 9.1 NCH shall have sufficient appropriately qualified and experienced Staff to ensure that the Services are provided in all respect and at all times in accordance with this Agreement.
- 9.2 NCH shall ensure that the Staff:
  - 9.2.1 if applicable, are registered with and where required have completed their revalidations by the appropriate professional regulatory body;
  - 9.2.2 possess the appropriate qualifications, experience, skills and competencies to perform the duties required of them and be appropriately supervised, managerially and professionally;
  - 9.2.3 are covered by the Provider's Indemnity Arrangements (as identified and to the extent set out in clause 16 (liability and indemnity) for the provision of the Services;
  - 9.2.4 carry, and where appropriate display, valid and appropriate identification in accordance with Good Industry Practice; and

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- 9.2.5 are aware of and respect equality and human rights of colleagues, Occupiers, Landlords, a Third Party and the public.
- 9.2.6 with the agreement of NCC shall undertake DBS checks if it becomes appropriate / necessary during the process of undertaking an IMO or MO. This will be considered on a case by case basis.
- 9.4 NCH shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 9.5 NCH shall comply with all relevant legislation relating to its Staff however employed including the compliance in law of the ability of Staff to work in the United Kingdom.
- 9.6 If NCH has a finding against it in relation to its obligations under clause 9.4 or 9.5 it will provide the Council with:
  - 9.6.1 details of the finding; and
  - 9.6.2 the steps taken by NCH to remedy the situation.

## **10. STATUTORY AND POLICY COMPLIANCE**

- 10.1 NCH shall comply with all relevant legislation and all relevant policies of the Council in the provision of the Service.
- 10.2 NCH shall comply with its own policies at all times.
- 10.3 In the event of any conflict between the Council's policies and the policies of NCH it shall be the policies of the Council that are complied with in the delivery of the Services.
- 10.4 NCH shall comply with all obligations under the Human Rights Act 1998.
- 10.5 NCH shall ensure that it carries out all statutory safety checks at the House, including gas and electricity checks and the cost of carrying out such checks shall be considered Relevant Expenditure.

## **11. MONITORING AND REPORTING**

- 11.1 NCH shall comply with any and all monitoring and reporting requirements as required by the Council throughout the Contract Period, including:
  - 11.1.1 reporting financial information as required under Schedule 2;

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11.1.2 reporting on any Works carried out or which are anticipated to be required to be carried out;

11.2 NCH shall comply with any and all monitoring and reporting requirements that may be imposed by any governing or accreditation body that NCH is a member of.

## **12. OCCUPIER RECORDS**

12.1 NCH shall create, maintain, store and retain Records for all Occupiers ("Occupier Records") which shall include such information as:

12.1.1 tenancy details;

12.1.2 Rent information;

12.1.3 complaints from or regarding the Occupier;

12.1.4 copies of any notices served on an Occupier.

12.2 NCH shall retain such records for a period of 6 years or as may otherwise be required by Law and may be retained electronically only.

12.3 NCH shall use the Occupier Records solely for the execution of its obligations under this Agreement.

## **13. CONFIDENTIALITY**

13.1 Except to the extent set out in this clause or where disclosure is expressly permitted, each party shall:

13.1.1 treat the other party's Confidential Information as confidential;  
and

13.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent

13.2 Clause 13.1 shall not apply where:

13.2.1 such disclosure is a requirement of law placed upon the party making the disclosure

13.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure;

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- 13.2.3 such information was obtained from a third party without obligations of confidentiality;
  - 13.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
  - 13.2.5 it is independently developed without access to the other party's Confidential Information
- 13.3 The Provider shall not, and shall procure that the Provider's staff do not, use any of the Council's Confidential Information received otherwise than for the purpose of providing the Service.

### **13. INTELLECTUAL PROPERTY**

Except as set out expressly in this Agreement no party shall acquire the Intellectual Property Rights of any other party.

### **14. DATA PROTECTION**

- 14.1 To the extent that NCH is acting as a Data Processor on behalf of the Council NCH shall:
- 14.1.1 process the Personal Data only as is necessary to perform its obligations under this Agreement and only in accordance with instructions from the Council under this Agreement.
  - 14.1.2 process the Personal Data only to the extent, and in such a manner, as is necessary for the priorities of the Services or as is required by Law.
  - 14.1.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, obstruction, damage, alteration or disclosure.
  - 14.1.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data.
  - 14.1.5 obtain prior written consent from the Council in order to transfer the Personal Data to any sub-contractors for the provision of the Services.
  - 14.1.6 ensure that all Staff required to access the personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 14.

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14.1.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council

14.1.8 not process Personal Data outside the European Economic Area without the prior written consent of the Council

## **15. FREEDOM OF INFORMATION**

15.1 The parties acknowledge that each is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with each other to enable each party to comply with their information disclosure obligations.

15.2 Where a party receives a Request for Information in relation to Information which it is holding on behalf of the other party, it shall:

15.2.1 transfer the Request for Information to the other party as soon as practicable after receipt and in any event within 5 Working Days of receiving the Request for Information;

15.2.2 provide the other party with a copy of all Information within its possession or power in the form that the other party requires within such reasonable timescales given by the other party or where no timescale is given within 5 Working Days;

15.2.3 provide all necessary assistance as reasonably requested by the other party to enable that party to respond to the Request for Information within the time for compliance set out in section 10 FOIA or regulation 5 EIR.

15.3 Each party shall be responsible for determining at its absolute discretion whether the Information (including Confidential Information subject to clause 13):

15.3.1 is exempt from disclosure under the FOIA or the EIR; or

15.3.2 is to be disclosed in response to a Request for Information.

## **16. LIABILITY AND INDEMNITY**

16.1 NCH shall put in place and maintain appropriate insurances in respect of:

16.1.1 employers' liability;

16.1.2 public liability;

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- 16.1.3 professional indemnity; and
- 16.2 NCH shall prior to the Commencement Date and on each anniversary of the Commencement Date upon request, provide details of such insurances to the reasonable satisfaction of the Authorised Officer and enhance that all premiums relating to such insurances have been paid.
- 16.3 For the avoidance of doubt NCH shall be liable to make good any deficiency in the event that the proceeds of any insurance are insufficient to cover the settlement of any claim relating to this Agreement.
- 16.4 NCH warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which any insurances put in place pursuant to clause 16.1 may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurance repayable in whole or in part.
- 16.5 Neither party seeks to exclude or limit its liability for:
- 16.5.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
  - 16.5.2 fraudulent misrepresentation;
  - 16.5.3 any actual or alleged infringement of a third party's intellectual property rights; or
  - 16.5.3 any other matter in respect of which, as a matter of law, liability cannot be excluded or limited.
- 16.6 Except where specifically provided, neither party shall be liable to the other for any indirect or consequential loss (including loss of profit and pure economic loss) however caused.
- 16.7 Each party shall indemnify the other against any direct loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings in respect of the loss or damage to the real or personal property of the indemnified party or any third party, or injury to any person arising from the indemnifying party's negligence, or breach of contract in connection with the performance of this Agreement or the provision of the Services (including, in the case of NCH (without limitation) its use of any equipment or other materials or products, and the actions or omissions of the Staff or sub-contractors in the provision of the Services), except insofar as such loss, damage or injury has

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been caused by any act or omission by, or on the part of, or in accordance with the instructions of the indemnified party, its employees or agents.

- 16.8 The indemnity at 16.7 shall include where NCC has wrongfully obtained an Order or the Order is defective, action taken in breach of any headlease of the House or where third party consent has not been obtained but was required.
- 16.9 NCC shall indemnify NCH against a landlords claim to the Residential Property Tribunal for a determination of expenditure reasonably incurred and NCC shall pay any sums and costs ordered by the tribunal.

### **17.1 DUTY TO INSURE THE HOUSE**

- 17.1 In accordance with s.106(3) and 106(7) HA2004 NCC will make such reasonable provision for insurance of the House against destruction or damage by fire or other causes which may include payment of insurance premiums to be made to a headlandlord under Lease provisions.
- 17.2 The cost of any insurance premiums in respect of 17.1 shall be deemed Relevant Expenditure.

### **18. TERMINATION**

- 18.1 Without prejudice to any other rights and remedies it may possess, the Council shall be entitled forthwith to terminate this Agreement by notice:
- 18.1.1 if there is a material or substantial breach by NCH of any of its obligations under this Agreement which is incapable of remedy; or
  - 18.1.2 if there is a material or substantial breach by NCH of any of its obligations under this Agreement which is capable of remedy and the Council has set out the breach in writing together with any action to be taken and the timescales for such action to be completed, but NCH have failed to remedy the breach; or
  - 18.1.3 where NCH commits persistent minor breaches of this Agreement whether remedied or not; or
  - 18.1.4 where the Partnering Agreement is terminated for any reason;

if NCH, or where applicable, any Director or senior manager of

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it :

- 18.1.5 has any Director or senior manager convicted of an offence involving dishonesty that would reasonably call into question the ability of NCH to deliver the Services; or
  - 18.1.6 has an application made or notice of intention is given under the Insolvency Act 1986 to appoint an administrative receiver or administrator or an administrative receiver or administrator is appointed; or
  - 18.1.7 has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed; or
  - 18.1.8 has a provisional liquidator, receiver or manager appointed; or
  - 18.1.9 has possession taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge; or
  - 18.1.10 is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator, or administrative receiver, or which entitle the Court to make a winding-up order; or
- 18.2 Upon such termination, in addition to such consequences as are set out in the other provisions of this Agreement:
- 18.2.1 NCH shall be deemed to be in breach of this Agreement; and
  - 18.2.2 NCH shall forthwith cease to perform any of the Service; and
  - 18.2.3 NCH shall be liable forthwith to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of contract by NCH; and
  - 18.2.4 the Council shall have the power to deduct from any monies owing to NCH, such sums as are due to the Council or may thereafter become due to the Council under this Agreement; and
  - 18.2.5 any sums due to the Council and not recovered by means of

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deduction or set-off shall be recoverable from NCH as a debt;  
and

- 18.2.6 NCH shall forthwith release and hand over to the Council any and all Council property.
- 18.3 NCH shall be entitled forthwith to terminate this Agreement by notice where NCC fails to make payment under clause 3 where the failure to pay exceeds 90 days and reasonable attempts have been made by the parties to resolve the matter.
- 18.4 Either party may terminate this agreement by giving not less than 12 months (or such other period agreed by the parties), written notice to the other party at any time during the Contract Period and for any reason.

## **19. DISPUTE RESOLUTION PROCEDURE**

- 19.1 If a dispute arises between the Council and NCH in connection with the Agreement the parties shall use reasonable endeavours to resolve such dispute by means of a prompt discussion between the Authorised Officer and Contract Manager.
- 19.2 If a dispute is not resolved within ten (10) Working Days of referral under clause 19.1 then either party may refer it to the Director of Community Protection for the Council and the Director of Housing for NCH, or such appropriate nominated officer of each party for resolution who shall meet for discussions within ten (10) Working Days or longer period as the parties may agree.
- 19.3 Where following ten (10) Working Days after a meeting has taken place under clause 19.2 a dispute has not been resolved to the satisfaction of both parties the dispute may next be referred at the request of either party to mediation.
- 19.4 The mediation shall be in accordance with the Centre for Effective Dispute Resolution ("the CEDR") Model Mediation Procedure ("the Model Procedure") current at the time of referral to the CEDR. Unless otherwise agreed between the parties, the mediator will be nominated by the CEDR.
- 19.5 To initiate a mediation, either the Authorised Officer or the Contract Manager (as the case may be) must give notice ("ADR Notice") to the other requesting a mediation. A copy of the ADR Notice shall be sent to the CEDR.

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- 19.6 The procedure in the Model Procedure will be amended to take account of :
- 19.6.1 any relevant provisions within this Agreement;
  - 19.6.2 any other agreement which the Council and the NCH may enter into in relation to the conduct of the mediation (“the Mediation Agreement”).
- 19.7 If there is any point on the conduct of the mediation upon which the Council and NCH cannot agree within 14 days from the date of the ADR Notice, the CEDR will, at the request of either party, decide that point , having consulted with them.
- 19.8 The mediation will start not later than 28 days after the date of the ADR Notice.
- 19.9 Neither the Council nor NCH may commence any court proceedings in relation to any dispute or difference arising out of this Agreement until they have attempted to settle it by mediation and that mediation has terminated.
- 19.10 Neither party may terminate the mediation until each of them has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter, the Model Procedure will apply.
- 19.11 The mediation will take place in Nottingham and the language of the mediation will be English. The Mediation Agreement referred to in the Model Procedure shall be governed by, and construed and take effect in accordance with English law. Where court proceedings are relevant, the courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with, the mediation.
- 19.12 In accordance with the terms of the Model Procedure, the settlement agreement arising from the conclusion of mediation will be enforceable by legal action where court proceedings have not been commenced.
- 19.13 If the parties have not settled the dispute or difference by mediation within 42 days from the date of the ADR Notice, the dispute or difference shall be determined by court proceedings.

## **20. BRIBERY AND CORRUPTION**

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- 20.1 NCH shall and shall procure that persons associated with it or other persons who are performing services in connection with this Agreement:
- 20.1.1 comply with all applicable laws, statutes, regulations, and where appropriate codes relating to anti-bribery and anti-corruption (“Relevant Requirements”), including the Bribery Act 2010; and
  - 20.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1,2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 20.1.3 not do, or omit to do, any act that will cause or lead the Council to be in breach of any of the Relevant Requirements;
  - 20.1.4 promptly report to the Council any request or demand for any undue financial or other inducement of any kind received by NCH in connection with the performance of this Agreement;
  - 20.1.5 have and shall maintain in place throughout the Contract Period its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
  - 20.1.6 if requested, provide the Council with any reasonable assistance to enable the Council to perform any activity required for the purpose of compliance with any of the Relevant Requirements.
- 20.2 NCH shall indemnify the Council against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by, or awarded against the Council as a result of any breach of this clause 20 by NCH.
- 20.3 Breach of this clause 20 shall be deemed a material breach under clause 18.1.
- 20.4 If the Council terminates this Agreement for breach of this clause 20 NCH shall not be entitled to claim compensation or any further remuneration whatsoever.

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## **21. VARIATION**

- 21.1 No variation to this Agreement shall be valid unless it is in writing and signed by the Authorised Officer and Contract Manager.
- 21.2 The party proposing the variation (the "Proposer") shall make a proposal in writing to the other party (a "Variation Proposal") setting out:
- 21.2.1 variation proposed;
  - 21.2.2 reason for the variation;
  - 21.2.3 implications of the variation, including financial and operational; and
  - 21.2.4 effective date.
- 21.3 Upon receipt of the Variation Proposal the receiving party (the "Recipient") shall respond to it in writing within 10 Working Days from the date of receipt, or if it marked "urgent" within 5 Working Days from the date of receipt.
- 21.4 If the Recipient does not agree to the variation Proposal, the Recipient shall in its response under 21.3 state that the variation is refused and shall set out the reasons for the refusal.
- 21.5 following a response under 21.4 the Proposer may:
- 21.5.1 withdraw the Variation Proposal; or
  - 21.5.2 refer such refusal to dispute resolution in accordance with clause 19;  
or
  - 21.5.3 serve notice to terminate this Agreement in accordance with clause 18.
- 21.6 Where the Recipient is in agreement to any proposal from the Proposer, the Variation shall be signed in duplicate by both parties and a copy retained by each party and appended to this Agreement.

## **22. FORCE MAJEURE**

- 22.1 Subject to the following provisions of this clause 22, neither party shall be considered to be in default of this Agreement or liable to the other party by reason of any delay or failure in the performance of that party's obligations under this Agreement if caused (without fault or negligence of that party) in whole or in part by any act, omission or circumstances beyond the reasonable control of that party (a "Force Majeure Event").
- 22.2 A Force Majeure Event shall include, but not be limited to, an act of God, flood, storm, fire, war, terrorist act, riot, act of Government, breakdown of

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machinery, shortages of materials, or a delay or failure on the part of any sub-contractor, supplier or carrier of goods or materials relating to this Agreement.

22.3 For the avoidance of doubt, strike or other industrial action shall not be considered to be a Force Majeure Event.

22.4 If either party is prevented from delivering its obligations under this Agreement by a Force Majeure Event:

22.4.1 it shall immediately serve notice in writing on the other party, giving details of the nature, circumstance and commencement of the Force Majeure Event; and

22.4.2 it shall use all reasonable endeavours to end or resolve the Force Majeure Event and to resume performances on its obligations as soon as it has ceased; and

22.4.3 Subject to clause 22.5, the time for performance of the obligations that is the subject of the notice at 22.4.1., may be extended by a period equivalent to the delay caused by the Force Majeure Event.

22.5 If a Force Majeure Event continues for a period of more than 28 days from the date of its commencement either party shall be entitled to terminate this Agreement immediately upon written notice to the other party without liability except for any rights or liabilities which have accrued up to the date of termination of the Agreement.

## **23. NOTICES**

23.1 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served personally, or by sending it by first class post or recorded delivery to the appropriate address, as set out at the beginning of this Agreement/

23.2 Any notice shall be deemed to be served:

23.2.1 on the day of delivery if served personally; or

23.2.2 48 hours after posting it by first class post; or

23.2.3 at the time of signature if by recorded delivery

## **24. WAIVER**

24.1 The failure by either party to enforce at any time any area or more of the provisions of this Agreement shall not be a waiver of them, or of the right at

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any time subsequently to enforce all or any of the provisions of the Agreement.

- 24.2 No waiver of any of the provisions of the Agreement shall be effective unless it is expressed to be a waiver in writing.

## **25. THIRD PARTY RIGHTS**

This Agreement is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999 are excluded.

## **26. ASSIGNMENT AND SUB-CONTRACTING**

- 26.1 This agreement is personal to the parties and neither party shall assign, transfer, or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 26.2 NCH may sub-contract any part of the Services subject to obtaining the Council's written consent.
- 26.3 NCH shall remain responsible and liable for the acts and omissions of any sub-contractors, servant, agents or employees as though they were its own.

## **27. SEVERANCE**

If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

## **28. COSTS AND EXPENSES**

Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of the Agreement.

## **29. NO AGENCY OR PARTNERSHIP**

- 29.1 Nothing in this Agreement will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee.
- 29.2 Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

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**30. LAW AND JURISDICTION**

This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

AS WITNESS the hands of the parties

SIGNED for and on behalf  
of the Council

Authorised signatory

SIGNED for and on behalf  
of the Provider

Authorised signatory

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## **SCHEDULE 1**

### **The Services**

#### **BACKGROUND**

- A.1 The Council as a Local Housing Authority is responsible for the licensing of any HMO in accordance with part 2 and Part 3 HA2004.
- A.2 The Council is under a statutory duty to make an IMO where:
- A.2.1 The House is required to be licensed under Part 2 or Part 3 HA2004 but is not licensed and the Council considers:
- A.2.1.1 there is no reasonable prospect of the House being licensed in the near future; or
- A.2.1.2 the Health and Safety Condition is satisfied.
- A.2.2 The House is required to be licensed under Part 2 or Part 3 HA2004 and is licensed and:
- A.2.2.1 the licence is revoked but the revocation is not yet in force; and
- A.2.2.2 the Council considers that on the revocation coming into force there is no reasonable prospect of the House being licensed in the near future; or
- A.2.2.3 on the revocation coming into force the Health and Safety Condition will be satisfied.
- A.3 The Council is also granted statutory power to make an IMO in other prescribed circumstances.
- A.4 The Council is under a statutory duty to make an FMO to replace the IMO from its expiry date if:
- A.4.1 on that expiry date the House would be required to be licensed under Part 2 or Part 3 HA2004; and
- A.4.2 the Council consider that it is unable to grant such a licence that would replace the IMO from the expiry date.
- A.5 The effect of an Order is that the Council:

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- A.5.1 has the right to possession of the House (subject to any rights of existing Occupiers);
- A.5.2 has the right to do in relation to the House anything which the Landlord or any Third Party would be entitled to do; and
- A.5.3 may create one or more of the following:
  - A.5.3.1 a fixed term lease; or
  - A.5.3.2 a licence to occupy.
- A.6 The Council does not acquire any estate or interest in the Property and therefore, apart from the rights granted under A.5.3 it may not sell, lease, charge or make any other disposition of any estate or interest.
- A.7 The Council may authorise a manager in respect of its powers under A.5 and has appointed NCH for this role.

## **SERVICES AND OBLIGATIONS**

### **INTERIM MANAGEMENT ORDERS**

#### **B. INFORMATION PACK**

- B.1 Where the Council considers it may be necessary to make an Order in respect of a House but before an Order has been made there shall be an initial discussion between the Parties to ascertain the management requirements. An Order made following this meeting shall be on the implied understanding that the Parties agree to work together in accordance with the provisions contained in the Schedules to this Agreement.
- B.2 The Council shall provide to NCH no later than 3 working days after the making of the IMO an Information Pack containing such information to include:
  - B.2.1 copy of the Order;
  - B.2.2 copies of Notices sent by the Council to the Occupiers, Landlord and any Third Party;
  - B.2.3 name and contact details of the Landlord and any Third Party;
  - B.2.4 details of each Occupier including:
    - B.2.4.1 names;

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- B.2.4.2 Rent details;
- B.2.4.3 where possible deposit details, amount of deposit and where held;
- B.2.4.4 tenancy/licence agreement;
- B.2.4.5 where possible move in inventories;
- B.2.4.6 guarantees/instructions for Landlord's goods/equipment;
- B.2.5 details of any lease under which the Landlord is the lessee.
- B.2.6 most recent gas safety certificates, fixed wiring certificates and portable appliance testing certificates;
- B.2.7 details of any service charges payable by Occupiers including what the charges are for, when they are due and any amounts outstanding;
- B.2.8 details of current utilities providers and reference;
- B.2.9 details of council tax office and reference;
- B.2.10 details of insurances in effect for the House, including premiums, and date of expiry.
- B.2.11 Programme of Works
- B.3 As part of the meeting at B1 the Council will use its best endeavours to provide an overview of the position to NCH with regard to the House based on the information it has in its possession prior to the making of the Order.
- B.4 The Contract Manager shall acknowledge receipt of the Information Pack to the Authorised Officer within 3 working days of receipt.
- B.5 Upon receipt of the Information Pack NCH will be deemed to have assumed the management responsibilities for the House under the Order.

## **C. NCH NOTIFICATION LETTERS**

- C.1 Following receipt of the Information Pack and no later than 5 Working Days following receipt of the information pack (which shall not in any event exceed being 10 Working Days after the making of the Order), NCH shall send a notification letter by first class post to each Occupier (but for the avoidance of doubt this shall not include any person known to be under the age of 18 years), containing the following information:

- C.1.1 introduction of NCH, including contact details;

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C.1.2 when and how Rent will be collected;

C.1.3 advise that the locks to all external doors at the House are to be changed, the date and time that when this will happen and that Occupiers must hand the current keys to NCH;

C.1.4 any other relevant information including how to notify NCH of defects / repairs.

C.2 At the same time that letters are sent out to Occupiers under C.1 NCH shall write to the Landlord and any Third Party introducing themselves and providing contact details.

C.3 Where NCH require documents to be produced by an Occupier or the Landlord which were not contained in the Information Pack or are required to ensure the proper management of the House under the IMO, NCH shall, subject to the necessary authorisation being given by the Council under clause 5, provide notice to the Occupier or Landlord requiring them to produce the documents at a time, place and to a person specified in the notice. The notice shall also include that it is an offence to fail to provide the documents.

#### **D. WORKS TO BE CARRIED OUT**

D.1 No later than 5 Working Days after sending the notification under C.1 NCH shall contact the occupiers to make appointments to carry out gas safety inspections and arrange for all external locks at the House changed. New keys shall be provided to the Occupiers and keys for the old locks recovered.

D.2 Where no authorisation has been granted by the Council under clause 5, the work under D.1 shall be carried out in the presence of an authorised Council Officer. Where an occupier refuses access to NCH to carry out a gas safety inspection changing of external locks or to carry out another activity that NCH is required to undertake pursuant to this agreement, any enforcement action required to gain such access shall be undertaken by NCC at its own cost.

D.3 The cost of fitting new locks and the gas safety inspection shall be considered Relevant Expenditure.

D.4 NCH shall carry out any Works identified on the Programme of Works and as may be identified by the Council or NCH during the Management Period.

D.5 In carrying out any Works NCH shall meet the following targets:

<b><u>Category</u></b>	<b><u>Timescales to be met</u></b>
Emergency Repairs	Situation to be made safe

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<i>(Where the health or safety of Occupiers are at imminent risk)</i>	within 4 hours and basic repairs only to be completed within 72 hours
Very Urgent Repairs (Where the health or safety of Occupiers are at risk)	Works completed within 72 hours
Urgent Repairs <i>(those affecting the material comfort of Occupiers)</i>	Works completed within 7 Working Days
Non-Urgent Repairs	Works completed within 30 Working Days and up to 90 Working Days if special parts required

- D.6 Any Works carried out will be subject to NCH providing reasonable written notice (and no less than 24 hours) to the Occupiers and Landlord detailing the date and time when NCH will be attending the House to carry out the Works unless the Works are considered to fall within the categories of Emergency or Very Urgent Repairs.
- D.7 Where notice is provided under D.6 and NCH is prevented by an Occupier to gain entry to the House for the purpose of carrying out Works then a further letter shall be sent to the Occupiers and Landlord. If NCH are once again prevented entry to the House they shall inform the Council who shall then decide whether it is appropriate to apply to the Magistrates' Court for a warrant.
- D.8 Works carried out shall be by in-house labour at NCH or such contractors selected in accordance with NCH's procurement procedure.
- D.9 The parties acknowledge that where there is a head lease under which the Landlord is the tenant consent may be required by the head lessor before carrying out any Works. In such circumstances NCH shall on behalf of the Council contact the head lessor and obtain consent. Where consent is not provided NCH shall advise the Council and the parties shall agree what action may be taken.

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## **E. JOINT INSPECTIONS/INVENTORIES**

- E.1 Upon receipt of the Information Pack NCH and the Council shall arrange to carry out a joint inspection where practical with each Occupier at the House.
- E.2 During such inspection NCH shall take photographic evidence of the state and condition of the House and any property of the Landlord.
- E.3 Following the joint inspection NCH shall prepare agreed inventories of all furniture, fixtures and property of the Landlord which is for the use of Occupiers including details of their condition.
- E.4 During the Management Period NCH may purchase replacement furniture, fixtures and fittings for the House on a like-for-like basis as and when necessary. The Council reserves the right to request that it carries out a prior inspection of such items before they are replaced.
- E.5 Clear records of any expenditure incurred under E.4 shall be recorded in accordance with F.2 and Schedule 2 and the cost of the replacement items shall be considered Relevant Expenditure.

## **F. REPORTING**

- F.1 NCH shall produce individual quarterly reports in respect of all Houses being managed under Orders.
- F.2 the report shall contain as a minimum the following information:
  - F.2.1 any maintenance or Works carried out;
  - F.2.2 details of any damaged sustained at a House;
  - F.2.3 details of any failure by an Occupier to comply with any obligations under the terms of their tenancy/licence;
  - F.2.4 details of any replacement items bought under E.4
  - F.2.5 details of all new licences, leases and Occupiers created under G.3

## **G. OCCUPIERS**

- G.1 For all existing Occupiers, being those in occupation at the time of the Order, any agreement by way of a tenancy or licence shall be read as though the Landlord's name were substituted with Nottingham City Council.

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- G.2 All rights and liabilities for existing Occupiers under their lease or licence arrangements shall continue to be in effect during the Management Period.
- G.3 NCH may create during the Management Period one or more of the following:
- G.3.1 fixed term lease; or
  - G.3.2 licence to occupy.
- But for the avoidance of doubt no Council tenancy (including Secure and Introductory Tenancies) may be granted under the Housing Act 1985 (as amended)
- G.4 Any new licence or lease created under G.3 shall be in the name of the Council and NCH shall report all new licences, leases and Occupiers as part of their reporting responsibilities under F.2
- G.5 The right at G.3 shall only apply where NCH has obtained the prior consent in writing from the Landlord.

## **H. NO ESTATE OR INTEREST**

- H.1 Neither the Council nor NCH shall acquire any estate or interest in the House.
- H.2 Other than the rights granted under G.3 NCH shall not be entitled to sell, lease, charge or make any other disposition of such estate or interest.

## **FINAL MANAGEMENT ORDERS**

### **I. ACTION PRIOR TO MAKING OF FMO**

- I.1 NCH shall provide all reasonable assistance to the Council in the preparation of the FMO.
- I.2 Such assistance shall include working with the Council to:
- I.2.1 prepare a Management Scheme;
  - I.2.2 serve all relevant documents as required under Schedule 6 Part 1 HA2004;
  - I.2.3 consider any representations that may be made following the service of any notices under I.2.2.

### **J. COMMENCEMENT OF FMO**

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- J.1 Once the FMO has been made the Council shall serve on any Occupier, Landlord and Third Party a copy of the Order and required notice.
- J.2 The Council shall provide a copy of the documentation referred to in J.1 to NCH.
- J.3 Following receipt of the Order and no later than 5 days after the making of the Order, NCH shall send a notification letter by first class post to each Occupier (but for the avoidance of doubt this shall not include any children), containing the following information:
  - J.3.1 introduction of NCH, including contact details;
  - J.3.2 when and how Rent will be collected;
  - J.3.3 any other relevant information.
- J.4 At the same time that letters are sent out to Occupiers under J.3 NCH shall write to the Landlord and any Third Party introducing themselves and providing contact details.
- J.5 Where NCH require documents to be produced by an Occupier or the Landlord to ensure the proper management of the House under the FMO, NCH shall, subject to the necessary authorisation being given by the Council under clause 5, provide notice to the Occupier or Landlord requiring them to produce the documents at a time, place and to a person specified in the notice. The notice shall also include that it is an offence to fail to provide the documents.

## **K. NCH CONTINUING DUTIES UNDER FMO**

The management duties performed by NCH in respect of any IMO shall continue to be performed in respect of an FMO, subject to any provisions to the contrary contained in the remainder of this Schedule 1.

## **L. CREATION OF NEW OCCUPIERS**

- L.1 NCH may create during the Management Period under an FMO and without the consent of the Landlord one or more of the following:
  - L.1.1 a fixed term lease; or
  - L.1.2 a licence to occupy; or
  - L.1.3 an assured shorthold tenancy where such tenancy is created no less than 6 months prior to the date on which the FMO is due to expire.

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L.2 Consent in writing from the Landlord shall be required when a lease or licence under L.1.1 or L.1.2 is:

L.2.1 for a fixed term which expires after the date on which the Order is due to expire; or

L.2.2 terminable by notice to quit of more than 4 weeks.

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## **SCHEDULE 2**

### **Financial Management**

#### **A. MAINTAINING OF ACCOUNTS**

- A.1 NCH shall be responsible for the financial arrangements during the Management Period.
- A.2 NCH shall collect all Rents due from Occupiers which are payable to the Council.
- A.3 Rents collected under clause A.2 shall be kept in an account set up for the purpose of the Services only. There is no requirement to have a separate bank account for each Order.
- A.4 Individual ledgers shall be maintained in respect of each House subject to an Order.
- A.5 NCH shall at regular intervals, and no more than quarterly reconcile the bank account against the individual ledger.
- A.6 NCH may use the Rents received under A.1 for the following purposes only:
- A.6.1 Relevant Expenditure;
  - A.6.2 any amounts of compensation payable to a third party pursuant to s.128 HA 2004 subject to such compensation having been agreed and approved by the Council.
- A.7 NCH shall not be entitled to deduct any Relevant Expenditure from the Rents received until an invoice has been submitted to the Council and authorisation has been received from the Council.
- A.8 In the event that Rents do not cover the Relevant Expenditure owed to NCH, such shortfall shall be detailed in the invoice and this amount shall be payable by the Council to NCH in accordance with the payment provisions at 3.6.
- A.9 At the end of the Management Period NCH shall produce a report including information where Rents received have not covered the Management Period and where the Landlord now owes the Council the shortfall. This information will be used to enable the Council to have such debt recorded as a Local Land Charge.

#### **B. PAYMENT TO LANDLORD**

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- B.1 At quarterly intervals (or on occasion such other interval as may be stated in the Order), NCH shall make arrangements to pay to the Landlord Rents collected under A.1 that remains after deductions have been made in accordance with A.6.

## **C. DEPOSITS**

- C.1 NCH shall ensure that all deposits received from the Landlord (together with accrued interest), or paid in respect of any new occupancy created under Schedule 1 G.3, are protected by way of a government approved tenancy deposit scheme.
- C.2 NCH shall ensure that it provides all Occupiers information regarding the tenancy deposit scheme.
- C.3 Where it is established through reasonable enquiries, such as the production of receipts, that a deposit has been paid by a tenant but not admitted by the Landlord or paid by the Landlord to NCH, or protected by a government backed scheme, NCH shall return such part of that deposit to the relevant Occupier at the termination of their occupancy as may be payable in accordance with the terms of the tenancy or licence agreement.
- C.4 Where a payment is made under C.3 it shall be deducted from the payments received under A.1 as Relevant Expenditure.

## **D NON PAYMENT OF RENT**

- D.1 Where a tenant fails to pay rent or comes into arrears NCH shall use their established rent arrears procedure. If arrears are not recovered then possession proceedings are to be commenced.
- D.2 Any possession proceedings commenced will be in the name of NCC and all paperwork prepared by NCH. The cost of proceedings are to be considered Relevant Expenditure. Advocacy at court for these proceedings shall be the responsibility of NCC.
- D.3 NCH shall maintain clear records of any rent recovery action it has taken and details of the value of the rent they have been unable to collect.

## **E RENT**

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E.1 Rent will at all times be collected in line with any existing arrangements and as detailed in the Information Pack.

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**Name and brief description of proposal / policy / service being assessed**

Policy for Nottingham City Homes to manage houses in multiple occupation (HMOs) on behalf of Nottingham City Council where an interim management order (IMO) or final management order (FMO) is made under the Housing Act 2004.  
 A HMO is a building or part of a building occupied as a main residence by 3 or more people that form 2 or more households.  
 A Management Order (interim or final) is an enforcement and housing management tool that a Local Housing Authority can make (in certain prescribed circumstances) to take over the management functions of a building of the landlord, ensuring the property is properly managed and the safety of the tenants is improved.  
 NCC proposes to utilise NCH to undertake its statutory obligation which requires an IMO or FMO to be made in certain prescribed circumstances. This will improve housing safety, standards and management within the private rented sector.

**Information used to analyse the effects on equality**

Responses from additional licensing consultation and EIA for additional licensing of Houses in Multiple Occupation, both available within the Executive Board report at

<http://open.nottinghamcity.gov.uk/comm/download3.asp?dctype=inline&filename=58017/ExecutiveBoardReportAdditionalLicensingfinal.pdf>

	Could particularly benefit (X)	May adversely impact (X)	How different groups could be affected: Summary of impacts	Details of actions to reduce negative or increase positive impact (or why action not possible)
People from different ethnic groups	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<p><b>Particular benefits.</b>                      Occupants of poorly managed privately rented properties come from all of the listed protected characteristics and others not covered by legislation e.g. social class, geography etc., but there is no data that gives the proportion from each of these groups. They will benefit from this proposal from improved safety, housing standards and management following the intervention of Nottingham City Council (NCC) working in partnership with Nottingham City Homes (NCH). As NCC has a legal duty to make management orders in certain circumstances</p>	Potential adverse impacts
Men, women (including maternity/pregnancy impact), transgender people	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		NCC has a legal duty to make an interim or final management order in certain circumstances.
Disabled people or carers	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		The positive impacts of intervention to improve safety, housing standards and management should outweigh the negative impact of not taking action.
People from different faith groups	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		NCC will ensure that each
Lesbian, gay or bisexual people	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Older or younger people	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Other (e.g. marriage/civil partnership, looked after	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		

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<p>children, cohesion/good relations, vulnerable children/adults)</p>		<p>and it is a service that will be introduced.</p> <p>Poor housing standards and conditions have a negative impact on health and outcomes for occupants. Intervention by NCC, working with NCH will improve housing standards and management within the property. The following plans and strategies link together and recognise the importance of good quality housing in improving health and health outcomes.</p> <p>Nottingham Housing Plan  <a href="http://www.nottinghamcity.gov.uk/housingplan">http://www.nottinghamcity.gov.uk/housingplan</a></p> <p>Joint Health and Wellbeing Strategy  <a href="http://open.nottinghamcity.gov.uk/comm/download3.asp?dltype=inline&amp;filename=55707/DraftJointHealthandWellbeingStrategy201316app1.pdf">http://open.nottinghamcity.gov.uk/comm/download3.asp?dltype=inline&amp;filename=55707/DraftJointHealthandWellbeingStrategy201316app1.pdf</a></p> <p>Vulnerable Adults Plan  <a href="http://gossweb.nottinghamcity.gov.uk/VA/index.aspx?articleid=16317">http://gossweb.nottinghamcity.gov.uk/VA/index.aspx?articleid=16317</a></p> <p>Children and Young People Plan  <a href="http://www.nottinghamcity.gov.uk/ics/index.aspx?articleid=2511">http://www.nottinghamcity.gov.uk/ics/index.aspx?articleid=2511</a></p> <p>Management Orders contribute to the Nottingham Housing Plan theme 'Improving</p>	<p>management order is made on a correct legal basis, following appropriate guidance and legislation as required to ensure it fulfils the correct criteria.</p> <p>It is unclear how many Management Orders will be made. Since the introduction of the Housing Act 2004 the Council has not made any yet. However, as the Council continues to improve the private rented sector this number can only increase.</p> <p>As there is a legal duty to make an IMO / FMO the negative impacts cannot be completely removed.</p> <p><b>Occupants &amp; landlords</b>  At the time an IMO / FMO is made legal notices will be served on landlords and information provided to tenants about the changes. For the tenants this will include such things as arrangements for dealing with repairs and payment of rent. Where necessary it may be appropriate to consider translating</p>
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		<p>Housing Standards in existing homes'. In particular</p> <ul style="list-style-type: none"> <li>• There is a need to reduce the fuel bills of citizens on lower incomes and to cut carbon emissions</li> <li>• The existing stock across all tenures needs to be kept in a good state of repair in order to prevent it becoming a larger, longer- term problem</li> <li>• The private rented sector is growing in importance in the housing market; with this comes a need to raise standards in the sector to meet tenant expectations</li> <li>• Some of the poorest housing conditions are experienced by the most vulnerable people in the city: by tackling poor housing a major contribution to other aspects of citizen wellbeing is made.</li> <li>• Well maintained homes in clean and safe neighbourhoods support citizen well being and community cohesion; key elements for succeeding in the neighbourhood transformation agenda</li> </ul> <p>Management Orders will fulfil the Councils public sector equality duty in that successful implementation will eliminate unlawful discrimination, victimisation and harassment; advance equal opportunities for people of</p>	<p>some information into relevant languages.</p> <p><b>Support by the Council</b>  NCC will continue to chair the landlord liaison panel (LLP), which is open to landlords in the private rented sector, allowing an opportunity to discuss matters that impact on landlords in a constructive way.</p> <p>The Council has also hosted an annual landlord conference, which provides an opportunity for landlords and other interested parties to be briefed on up coming issues that may have an impact on them. Currently the Council supports the East Midlands Property Owners (EMPO) landlords EXPO, which undertakes a similar function to the Council's conference.</p> <p>The Council also provides a range of support and advice to landlords and tenants for example over the phone, during inspections and on the website to enable them to effectively undertake their</p>
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responsibilities.

different groups and will foster good relations between people of different groups.

**Potential adverse impacts - Occupants**

Some occupants, following intervention from NCC may be at more of a threat of eviction if the landlord wishes to terminate the contract. As occupants within the private rented sector come from all of the listed protected characteristics and others not covered by legislation e.g. social class, geography etc, it is difficult to assess the impact on each group separately.

Landlords may choose to evict tenants following intervention by NCC, so this may negatively impact on occupants in HMOs. Housing Aid supports those seeking advice and guidance when they are made homeless.

**Potential adverse impacts - Landlords**

Following a recent consultation on additional licensing of HMOs a large proportion of Asian landlords responded and came forward and identified themselves as HMO landlords. However, there is no known data that links property ownership to ethnic origin or faith group.

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			<p>Other landlords may be affected from other groups, but there is no known data that links property ownership to different groups for the purposes of the EIA. We are trying to improve our data monitoring of landlord ethnicity to improve how we engage with landlords.</p> <p>Potential adverse effects would relate to financial impact for landlords that may have to improve the standards of their property up to the minimum standard, but this will have a positive impact on the occupants of the house.</p> <p>Management Orders will only be made where there is a legal basis for making them and by definition properties will be poorly managed / be in a poor condition and so will require the Council's intervention.</p>	
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**Outcome(s) of equality impact assessment:**

No major change needed  Adjust the policy/proposal  Adverse impact but continue  Stop and remove the policy/proposal

**Arrangements for future monitoring of equality impact of this proposal / policy / service:**

Operations Manager to review after 12 months even if no Management Orders (MO) have been made. If more than 10 MOs are made in 12 months, consider the impact on tenants and landlords where they are of protected characteristics and take appropriate/proportionate actions where necessary.

Approved by (manager signature): David Hobbs, Operations Manager HMO Team Tel. 0115 8761555. Email: <a href="mailto:david.hobbs@nottinghamcity.gov.uk">david.hobbs@nottinghamcity.gov.uk</a> 11 <sup>th</sup> February 2014	Date sent to equality team for publishing: Send document or link to <a href="mailto:equalityanddiversityteam@nottinghamcity.gov.uk">equalityanddiversityteam@nottinghamcity.gov.uk</a>
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